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Thomas J. Gritzmacher

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TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND, OH 44114

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte THOMAS J. GRITZMACHER, JOHN M. PALMER, LANCE J.
GAY and TIMOTHY A. YOKOTE

Appeal 2009-004476
Application 10/005,771
Technology Center 3600

Decided: August 19, 2009

Before HUBERT C. LORIN, JOSEPH A. FISCHETTI, and
BIBHU R. MOHANTY, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Thomas J. Gritzmacher et al. (Appellants) seek our review under 35 U.S.C. § 134 of the final rejection of claims 1, 3-6, 8, 9, 11-16, 18-28, and 36. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We AFFIRM.¹

THE INVENTION

The invention is a method of billing usage over a network including determining when a network interface is turned on and off. Specification [0006].

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A method of billing network usage over a network, said method comprising:
 - determining when a network interface is activated at a client system the network interface being activated when a communication link between the network and the client system is established;
 - obtaining at least one of a video file, a data file and an audio file across said communication link while said network interface is activated;
 - determining when said network interface is deactivated at the client system, the network

¹ Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed Aug. 5, 2008) and Reply Brief ("Reply Br.," filed Nov. 13, 2008), and the Examiner's Answer ("Ans.," mailed Sep. 17, 2008).

interface being deactivated when the communication link between the network and the client system is disconnected, wherein the determining when a network interface is activated and the determining when said network interface is deactivated is performed by the client system;
storing, at the client system, information relating to a time-based bill based on when the network interface is activated and when the network interface is deactivated;
transmitting a call detail record from the client system to a billing module on a billing system based on the information relating to said time-based bill.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Schweitzer	US 2001/0055291 A1	Dec. 27, 2001
Jones	US 2002/0176547 A1	Nov. 28, 2002
Buhler	EP 1 775 929 A2	Apr. 18 , 2007

The following rejections are before us for review:

1. Claims 1, 5-6, 8-9, 11-16, 19-27, and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Jones.
2. Claims 3 and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Jones and Schweitzer.
3. Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Jones, Schweitzer, and Buhler.
4. Claim 28 is rejected under 35 U.S.C. §103(a) as being unpatentable over Jones and Buhler.

ARGUMENTS

The rejection of claims 1, 5-6, 8-9, 11-16, 19-27, and 36 under §103(a) as being unpatentable over Jones.

Claims 1, 16, and 36

First, in rejecting claims 1, 16, and 36, the Examiner asserts that, if the pack billing system 104 and communication device 112 of Jones were integrated, Jones teaches the claimed client system. Ans. 4-5 and 8. The Examiner relied upon *In re Larson*, 340 F.2d 965, 968 (C.C.P.A. 1965) for the proposition that merely making something integral only requires routine skill in the art. Ans. 5 and 8.

The Appellants traverse the rejection of independent claims 1, 16, and 36 and assert that making the packet billing system 104 and communications device 112 of Jones integral would not have been obvious. Ans. 18-19 and Reply Br. 2-5. The Appellants assert that making the packet billing system 104 and the communications device 112 integral would require replacing one billing system with multiple billing systems, which would operate in a fundamentally different way, and therefore the modifying Jones is not merely making several components into an integral unit as in *Larson*. Ans. 8.

Second, in the Answer, the Examiner also notes that claims 1, 16, and 36 recite a “client system” and that packet billing system 104 and communication device 112 are part of a packet communication system 101. Ans. 19. The Examiner states, “[n]othing about the invention as claimed would limit the interpretation of what is the “client system” in Jones to the communication device 112 or the packet billing system 104 as the applicant would suggest.” *Id.*

The Appellants respond that claims 1, 16, and 36 require that the client system for which activation and deactivation times are determined is the same as the client system at which information related to a time based bill is stored. Reply Br 3. The Appellants assert that Jones does not teach that the packet based billing entity, which store the information related to a time based bill, is the same entity at which the network interface is activated or deactivated. *Id.* Instead, the Appellants assert that Jones teaches a detected activation and deactivation of a call at a separate entity, communications device 112. *Id.* The Appellants conclude, “that even given its broadest reasonable interpretation, the packet communication system 101 disclosed in Jones does not read on the client system recited in claim 1.” *Id.*

Claims 5-6, 8-9, 11-14, and 19-26

The Appellants assert that dependent claims 5-6, 8-9, 11-14, and 19-26 are patentable for the same reasons used to argue against the rejection of claims 1, 16, and 3. App. Br. 10.

Claims 15 and 27

In addition to the arguments against the rejection of claims 1 and 16, the Appellants argue that Jones does not teach the step of displaying call detail record information as recited in dependent claims 15 and 27. App. Br. 10 and Reply Br. 7.

In response, the Examiner asserts that Jones describes generating a bill for a customer, based on call detail record information. Ans. 19. The Examiner concludes that given this description in Jones, it would be predictable that a display of the call detail record information would be made available to the customer. *Id.*

The rejection of claims 3 and 18 under §103(a) as being unpatentable over Jones and Schweitzer.

The Appellants argue that claims 3 and 18 are patentable for the same reasons asserted to traverse the rejections of independent claims 1 and 16. Ans. 11. The Appellants further argue that the addition of Schweitzer fails to make up for the deficiencies of Jones in regards to claims 1 and 16. *Id.*

The Examiner responds that claims 3 and 18 are unpatentable for the same reasons asserted with respect to claims 1 and 16. Ans. 19.

The rejection of claim 4 under §103(a) as being unpatentable over Jones, Schweitzer, and Buhler.

The Appellants argue that claim 4 is patentable for the same reasons as asserted to traverse the rejection of independent claim 1. Ans. 11. The Appellants further argue that the addition of Schweitzer and Buhler fails to make up for the deficiencies of Jones in regards to claim 1. *Id.*

The Examiner responds that claim 4 is unpatentable for the same reasons asserted with respect to claim 1. Ans. 19.

The rejection of claim 28 under §103(a) as being unpatentable over Jones and Buhler.

The Appellants argue that claim 28 is patentable for the same reasons as asserted to traverse the rejection of independent claim 16. Ans. 12. The Appellants further argue that the addition Buhler fails to make up for the deficiencies of Jones in regards to claim 16. *Id.*

The Examiner responds that claim 28 is unpatentable for the same reasons asserted with respect to claim 16. Ans. 19.

ISSUES

The issues are:

1. Would one of ordinary skill in the art have been led by Jones to a method where the client system determines when a network interface is activated and deactivated at the client system as recited in claims 1 and 16?
2. Would one of ordinary skill in the art have been led by Jones to an article tangibly embodying instructions that cause a client system to determine when a network interface is activated and deactivated at the client system as recited in claim 36?
3. Would one of ordinary skill in the art have been led by Jones to a step of displaying call detail record information as recited in claims 15 and 27?

FINDINGS OF FACT

We find that the following enumerated findings of fact (FF) are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

Claim construction

1. Claim 1 recites a method which includes the steps of 1) “determining when an network interface is active at a client system the network interface being activated when a communication link between the network an the client system is established;” and 2) “determining when said network interface is deactivated at the

client system, the network interface being deactivated when the communication link between the network and the client system is disconnected.”

2. Claim 1 recites “wherein the determining when a network interface is activated and the determining when said network interface is deactivated is performed by the client system.”
3. Claim 1 also recites the step of “storing, at the client system, information relating to a time-based bill based on when the network interface is activated and when the network interface is deactivated.”
4. Claim 16 recites a method which includes the steps of 1) “determining when a network interface to said content provider is activated” and 2) “determining when said network interface to said content provider is deactivated.”
5. Claim 16 recites “wherein the determining when a network is activated and the determining when said network interface is deactivated is performed by the client system.”
6. Claim 16 also recites the step of “storing, at the client system, information relating to a time-based bill based on when the network interface is activated and when the network interface is deactivated.”
7. Claim 36 recites a program storage device readable by machine a that tangibly embodies a program that causes the machine to perform the method of claim 1, including the steps above.
8. The Specification does not provide a definition for “system.”

9. A definition of “system” is “a regularly interacting or interdependent group of items forming a unified whole.” (*See Merriam-Webster’s Collegiate Dictionary* 1197 (10th Ed. 1998.)(First entry for “system.”))
10. Claim 15 depends upon claim 1 and recites the step of “displaying call detail record information based on information relating to said time-based bill.
11. Claim 27 depends upon claim 16 and recites the step of “displaying call detail record information.”

The scope and content of the prior art

Jones

12. Jones describes a communication system that generated billing information based upon usage. Jones [0029].
13. Jones’ communication system includes a packet communication system 101 which has a communication device 112 and a packet billing system 104. Jones [0032] and Fig. 1.
14. Jones’ communication system also includes a public switched telephone network billing system 194. Jones [0032] and Fig. 1.
15. Jones states, in paragraph [0035]:

Packet billing system 104 detects a call setup message in first signaling transmitted between signaling processor 102 and communication device 112. Packet billing system 104 generates a start record responsive to detecting the call setup message. Packet billing system 104 detects a call complete message in second signaling transmitted between signaling processor 102 and communication device 112. Packet billing system 104 generates an end record responsive to

detecting the call complete message. Packet billing system 104 transfers the start record and the end record.

16. Jones describes that the public switched telephone network billing system 194 receives and processes the start record and end record to generate a bill for the customer. Jones [0036].
17. Jones describes that the packet billing system 104 could alternatively create a call detail record based on the start record and end record and then transmits the call detail record to the public switched telephone network billing system 194. Jones [0037].

Schweitzer

18. The Examiner relied upon Schweitzer to teach transmitting encrypted information. Ans. 11.

Buhler

19. The Examiner relied upon Buhler to teach a video file. Ans. 13.

Any differences between the claimed subject matter and the prior art

20. Jones does not explicitly describe displaying call detail record information.

The level of skill in the art

21. Neither the Examiner nor the Appellants have addressed the level of ordinary skill in the pertinent art of billing. We will therefore consider the cited prior art as representative of the level of ordinary skill in the art. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error ‘where the

prior art itself reflects an appropriate level and a need for testimony is not shown’”) (Quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

Secondary considerations

22. There is no evidence on record of secondary considerations of non-obviousness for our consideration.

PRINCIPLES OF LAW

Claim Construction

During examination of a patent application, a pending claim is given the broadest reasonable construction consistent with the specification and should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

[W]e look to the specification to see if it provides a definition for claim terms, but otherwise apply a broad interpretation. As this court has discussed, this methodology produces claims with only justifiable breadth. *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984). Further, as applicants may amend claims to narrow their scope, a broad construction during prosecution creates no unfairness to the applicant or patentee. *Am. Acad.*, 367 F.3d at 1364.

In re ICON Health and Fitness, Inc., 496 F.3d 1374, 1379 (Fed. Cir. 2007). Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

Obviousness

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). *See also KSR*, 550 U.S. at 407 (“While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.”) The Court in *Graham* further noted that evidence of secondary considerations “might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” 383 U.S. at 17-18.

ANALYSIS

The rejection of claims 1, 5-6, 8-9, 11-16, 19-27, and 36 under §103(a) as being unpatentable over Jones.

Method Claims 1 and 16

We begin by construing claims 1 and 16. “Analysis begins with a key legal question - *what is the invention claimed?*”[emphasis added] Courts are required to view the claimed invention *as a whole*. 35 U.S.C. § 103. [emphasis added] Claim interpretation, in light of the specification, claim language, other claims, and prosecution history, is a matter of law and will

normally control the remainder of the decisional process.” *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1987). Claims 1 and 16 both recite a client *system*. FF 1-6. We note that the Specification does not contain an express definition of “system” (FF 8), and we give the term the broadest reasonable construction consistent with the specification. We find that the ordinary and customary meaning of “system” is a regularly interacting or interdependent group of items forming a unified whole (FF 9). We note that the ordinary and customary meaning of “system” does not require the items to be integral.

We find that the communication device 112 and the packet billing system of 104 of Jones are a “system”, as we have construed the term above. The communication device 112 and the packet billing system 104 are both items that regularly interact (FF 15) and are both described as part of the packet communication system 101 (FF 13).

Further, claim 1 requires that the step of determining when a network interface at a client system is activated and deactivated, be performed by the client system (FF 2) and that the step of storing information related to a time-based bill happen at the client system (FF 3). Claim 16 recites similar limitations. FF 5-6. The determining steps and storing steps are performed at or by the same client system.

As discussed above, we find that the communication device 112 and the packet billing system 104 are both parts of a system that read on the claimed “client system.” Jones teaches that the packet billing system 104 detects when a call setup message or a call complete message is transmitted to the communication device and that based on this, the packet billing system stores start and end records as a call detail records. FF 15 and 17. We find

that one of ordinary skill in the art would have been led by these teachings of Jones to the steps of determining activation and deactivation of a network interface and storing information related to a time-based bill by a client system as recited in claims 1 and 16.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claims 1 and 16 under 35 U.S.C. §103(a) as unpatentable over Jones.

Article Claim 36

Claim 36 recites a program storage device readable by machine that tangibly embodies a program that causes the machine to perform the method of claim 1. FF 7. The Appellants rely upon the same arguments as for claim 1 to traverse the rejection of claim 36. App. Br. 7-10. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claim 36.

Claims 5-6, 8-9, 11-14, and 19-26

The Appellants argue against the rejection of dependent claims 5-6, 8-9, 11-14, and 19-26 for the same reasons used to argue against the rejection of claims 1, 16, and 36. App. Br. 10. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claims 5-6, 8-9, 11-14, and 19-26.

Claims 15 and 27

In addition to the arguments against claims 1 and 16, which we found unpersuasive above, the Appellants argue that Jones does not teach a step of displaying call detail record information based on information relating to

said time-based bill as recited in dependent claims 15 (FF 10) and similarly recited in dependent claim 27 (FF 11).

However, Jones describes using the call detail record to generate a bill for the customer. FF 16. We find that one of ordinary skill in the art would have been led by Jones to the claimed steps of displaying call detail record information. The bill contains call detail record information based on information relating to said time-based bill. Giving the bill to the customer teaches displaying the bill.

Accordingly, we find that the Appellant has not shown that the Examiner erred in rejecting claims 15 and 27 under 35 U.S.C. §103(a) as unpatentable over Jones.

The rejection of claims 3 and 18 under §103(a) as being unpatentable over Jones and Schweitzer.

The Appellants argue against the rejection of dependent claims 3 and 18 for the same reasons used to argue against the rejection of claims 1.App. Br. 11. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claims 3 and 18.

The rejection of claim 4 under §103(a) as being unpatentable over Jones, Schweitzer, and Buhler.

The Appellants argue against the rejection of dependent claim 4 for the same reasons used to argue against the rejection of claim 1. App. Br. 11. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claim 4.

The rejection of claim 28 under §103(a) as being unpatentable over Jones and Buhler.

The Appellants argue against the rejection of dependent claim 28 for the same reasons used to argue against the rejection of claim 16. App. Br. 12. Accordingly, because we found them unpersuasive as to that rejection, we find them equally unpersuasive as to error in the rejection of claim 28.

CONCLUSIONS OF LAW

We conclude that the Appellants have not shown that the Examiner erred in rejecting:

claims 1, 5-6, 8-9, 11-16, 19-27, and 36 under 35 U.S.C. §103(a) as being unpatentable over Jones;

claims 3 and 18 under 35 U.S.C. §103(a) as being unpatentable over Jones and Schweitzer;

claim 4 under 35 U.S.C. §103(a) as being unpatentable over Jones, Schweitzer, and Buhler; and

claim 28 under 35 U.S.C. §103(a) as being unpatentable over Jones and Buhler.

DECISION

The decision of the Examiner to reject claims 1, 3-6, 8, 9, 11-16, 18-28, and 36 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

Appeal 2009-004476
Application 10/005,771

AFFIRMED

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TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P.
1300 EAST NINTH STREET, SUITE 1700
CLEVEVLAND OH 44114